



[BILLING CODE: 6750-01S]

FEDERAL TRADE COMMISSION

[File No. 191 0074]

Rent-to-Own Store Swaps; Analysis of Agreement Containing Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement; Request for Comment.

SUMMARY: The consent agreements in this matter settle alleged violations of federal law prohibiting unfair methods of competition. The attached Analysis of Agreement Containing Consent Order to Aid Public Comment describes both the allegations in the complaints and the terms of the consent orders—embodied in the consent agreements—that would settle these allegations.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested parties may file comments online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY**

INFORMATION section below. Please write: “Rent-to-Own Store Swaps; File No. 191 0074” on your comment, and file your comment online at <https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal

Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW,
5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Joseph Lipinsky (206-220-4473),
Federal Trade Commission, 915 Second Avenue, Room 2896, Seattle, WA 98174.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR § 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Website (for February 20, 2020), at this web address: <https://www.ftc.gov/news-events/commission-actions>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]. Write “Rent-to-Own Store Swaps; File No. 191 0074” on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the <https://www.regulations.gov> website.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online through the <https://www.regulations.gov> website.

If you prefer to file your comment on paper, write “Rent-to-Own Store Swaps; File No. 191 0074” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website at <https://www.regulations.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential” – as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) – including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC Website – as legally required by FTC Rule 4.9(b) – we cannot redact or remove your comment from the FTC Website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Analysis of Agreement Containing Consent Order to Aid Public Comment

I. Introduction

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Order with Aaron’s, Inc. (“Aaron’s”); an

Agreement Containing Consent Order with Buddy's Newco, LLC ("Buddy's"); and an Agreement Containing Consent Order with Rent-A-Center, Inc. ("RAC") ("Consent Agreements"). The proposed Consent Agreements are intended to remedy anticompetitive effects resulting from reciprocal purchase agreements made between Aaron's, Buddy's, and RAC, and certain of their competitors in the brick-and-mortar rent-to-own ("RTO") industry.

Pursuant to the reciprocal purchase agreements, Aaron's, Buddy's, and RAC sold consumer rental contracts to nearby competitors contingent on Aaron's, Buddy's, or RAC acquiring that competitor's consumer rental contracts in another geographic area. These reciprocal purchase agreements, called swap agreements ("Swap Agreements") by the RTO industry, also included non-competition agreements whereby Aaron's, Buddy's, or RAC and the nearby competitors each agreed to close stores associated with the consumer rental contracts being sold and to not open new stores within a specified distance for a limited amount of time. Not all swap agreements violate the antitrust laws. Swap agreements between companies in the same industry that generate significant procompetitive benefits for consumers, such as more efficient distribution or creation of a new product, may not violate the law. The Swap Agreements and ancillary non-competition agreements at issue in the present case, however, likely reduced competition between Aaron's, Buddy's, RAC, and their competitors in the RTO industry in several local markets in the United States, reducing consumer choice and depriving consumers of the benefits of price and quality competition.

Under the Consent Agreements, Aaron's and Buddy's agree that they will no longer enter into Swap Agreements and will not take any steps to enforce any non-

competition agreements associated with the Swap Agreements. The proposed Decision and Order (“Order”) in each Consent Agreement preserves competition in the RTO industry by prohibiting such Swap Agreements and enforcement of ancillary non-competition agreements.

II. The Parties

A. Aaron’s, Inc.

Aaron’s is headquartered in Atlanta, Georgia. As of December 2018, Aaron’s, the second largest operator of RTO stores, has 1,689 stores, comprised of 1,312 company-operated stores and 377 independently owned franchised stores operating in 47 states. Aaron’s estimates its 2018 fiscal year revenues were roughly \$3.8 billion with over \$196 million in net earnings.

B. Buddy’s Newco, LLC

Buddy’s, doing business as Buddy’s Home Furnishings, is a limited liability company headquartered in Orlando, Florida. Buddy’s operates approximately 300 franchised and corporate stores throughout the Continental United States.

C. Rent-A-Center, Inc.

Rent-A-Center, Inc. is a corporation headquartered in Plano, Texas. RAC has approximately 2,800 company-owned stores and 225 RAC franchised stores throughout the United States.

III. The Complaints

A. Background

In the RTO business, consumers do not buy merchandise outright, but rather take possession after entering into rental contracts with an RTO company. The contracts are

shortterm contracts (typically one week or one month) that renew when the consumer makes the lease payment. The rental contracts are at-will; consumers may terminate the contracts and return the merchandise without penalty. The rental contracts create a recurring revenue stream for the RTO company. If an RTO store closes, the RTO company will either transfer the store's rental contracts to another of its own stores, or sell them to a nearby competitor.

A large percentage of RTO customers travel to the RTO store associated with their rental contract to make their weekly or monthly payments. If an RTO company seeks to close a store and transfer the store's contracts to another, more distant store, the consumer may terminate the rental contract rather than traveling to the more distant store. The greater the distance between the receiving store and the closing store, the greater the likelihood that the consumer will terminate the contract. Therefore, if an RTO company does not have another store near the closing store, it may opt to sell its rental contracts to a competitor that has an RTO store in close proximity to the closing store.

B. The Challenged Conduct

Between 2015 and 2018, Aaron's, Buddy's, and RAC entered into several Swap Agreements with one another and with other RTO operators. These agreements typically covered stores in multiple different markets. Each Swap Agreement consists of two related transactions. In one transaction, a competitor closes one or more RTO stores and sells the closing stores' consumer rental contracts to Aaron's, Buddy's, or RAC, which have RTO stores near the competitor's soon-to-close stores. In the other transaction, the facts are reversed: Aaron's, Buddy's, or RAC closes one or more of its RTO stores and sells the soon-to-close stores' consumer rental contracts to the competitor which has RTO

stores nearby. The sales of the rental contracts by Aaron's, Buddy's, or RAC is explicitly contingent on the purchase of the competitor's rental contracts. Parties to the Swap Agreement also sign non-compete agreements, usually for a three-year period, for the areas in the immediate vicinity of the closed stores.

C. Effects of the Challenged Conduct

The evidence indicates that at least some of the Swap Agreements entered into by Buddy's, Aaron's, and RAC, had the purpose and effect of facilitating each party's ability to induce its competitor to exit a market. Such agreements are a form of restraint that reduces competition and creates a clear threat of consumer harm. Consumers in the affected geographic areas lost any benefits of competition resulting from the closing of RTO stores and had fewer options for rental merchandise. Moreover, the evidence indicates that Aaron's, Buddy's, and RAC closed stores that might not have been closed but for the Swap Agreements. As a result, the FTC has issued its Complaints and entered into the Consent Agreements, which remedy the harm to competition.

IV. The Agreement Containing Consent Order

The proposed Orders fully address Aaron's, Buddy's, and RAC's past actions and contain important fencing in and notification provisions. The Orders prohibit Aaron's, Buddy's, and RAC from entering into any future Swap Agreements and from enforcing any non-compete clauses that are still in effect from past Swap Agreements. The Orders also prohibit any Aaron's or Buddy's representatives from serving on the Board of Directors of any of their competitors, or any competitor's representatives from serving on the Aaron's or Buddy's Board. RAC's Order does not contain this prohibition because, unlike Buddy's and Aaron's, there is no evidence that a RAC representative has

previously served on a competitor's Board of Directors. The Orders require Aaron's and Buddy's to establish antitrust compliance programs, while RAC must establish a compliance program related to its Order. Finally, all the Orders impose reporting requirements, and the Orders will terminate in 20 years.

The Commission does not intend this analysis to constitute an official interpretation of the proposed Orders or to modify their terms in any way.

By direction of the Commission.

April J. Tabor,

Acting Secretary.

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